

HEARING DATE: June 22, 2010 at 10:00 a.m.  
 RESPONSE DEADLINE: May 28, 2010 at 4:00 p.m.  
 REPLY DEADLINE: June 11, 2010 at 4:00 p.m.

TOGUT, SEGAL & SEGAL LLP  
 Attorneys for Albert Togut,  
 Chapter 7 Trustee  
 One Penn Plaza, Suite 3335  
 New York, New York 10119  
 (212) 594-5000  
 Neil Berger  
 Steven S. Flores

UNITED STATES BANKRUPTCY COURT  
 SOUTHERN DISTRICT OF NEW YORK

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In the Matter	:	Chapter 7 Case
	:	No. 07-11569 (MG)
-of-	:	
	:	
S.W. BACH & COMPANY,	:	
	:	
Debtor.	:	
-----X	:	
ALBERT TOGUT, as Chapter 7 Trustee	:	
of S.W. BACH & COMPANY,	:	Adv. Pro. No. 09-01278 (MG)
	:	
Plaintiff,	:	
	:	
- against -	:	
	:	
RBC DAIN CORRESPONDENT SERVICES,	:	
A DIVISION OF RBC RAUSCHER INC.,	:	
RBC CAPITAL MARKETS CORPORATION	:	
(f/k/a RBC RAUSCHER, INC.),	:	
ANDREW GARRETT, INC., SCOTT SHAPIRO	:	
and JAS MANAGEMENT,	:	
	:	
Defendants.	:	
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RBC DAIN CORRESPONDENT SERVICES,	:
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	:
Defendants.	:
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**TRUSTEE'S MOTION FOR PARTIAL  
SUMMARY JUDGMENT AGAINST ANDREW GARRETT, INC.**

Albert Togut, the Chapter 7 Trustee (the “Trustee” or “Plaintiff”) of S.W. Bach & Company (“S.W. Bach” or the “Debtor”), by his attorneys, Togut, Segal & Segal LLP, as and for their motion (the “Motion”), seeks entry of an order granting partial summary judgment under Rule 7056 of the Federal Rules of Bankruptcy Procedure and Rule 56 of the Federal Rules of Civil Procedure against Andrew Garrett, Inc. (“AGI”) on the Trustee’s constructive fraudulent transfer claim (Count 9 of the Complaint). In support of the Motion, the Trustee respectfully represents as follows:

### **PRELIMINARY STATEMENT**

1. This Adversary Proceeding is based upon, among other things, the transfer of the Debtor’s right to manage and earn fees from hundreds of millions of dollars in customer accounts (the “Accounts”) to AGI for no consideration whatsoever (the “Transfer”). AGI received the Accounts, and the attendant right to manage and earn fees from the Accounts, following improper promises by AGI to S.W. Bach President Scott Shapiro.

2. AGI has already admitted that the Trustee has satisfied all but one element of his constructive fraudulent transfer claim. The only element that AGI has not admitted is whether the Transfer was of the Debtor’s interest in property. The Trustee submits that the well-established law and undisputed facts make it clear that the Transfer was unquestionably an avoidable “transfer of an interest of the Debtor in property,” as required by section 548 of the Bankruptcy Code.<sup>1</sup>

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<sup>1</sup> References to the Bankruptcy Code refer to 11 U.S.C. § 101, *et seq.*

### **JURISDICTION AND VENUE**

3. The Court has jurisdiction over this Motion under 28 U.S.C. §§ 157 and 1334. Venue is proper pursuant to 28 U.S.C. § 1409. This matter is a core proceeding under 28 U.S.C. § 157(b)(2).

4. The statutory predicates for the relief requested herein are sections 548 and 550 of the Bankruptcy Code, Rule 7056 of the Federal Rules of Bankruptcy Procedure and Rule 56 of the Federal Rules of Civil Procedure.

### **RELIEF REQUESTED**

5. The Trustee seeks entry of an order granting partial summary judgment on Count 9 of the Complaint against AGI as the recipient of an avoidable constructive fraudulent transfer pursuant to section 548 of the Bankruptcy Code, under Rule 56 of the Federal Rules of Civil Procedure, made applicable to this Motion by Bankruptcy Rule 7056.

### **FACTUAL BACKGROUND**

6. As detailed in the accompanying (i) Memorandum of Law in Support of the Motion for Partial Summary Judgment Against Andrew Garrett, Inc.; (ii) Trustee's Statement of Uncontested Material Facts Submitted in Support of his Motion for Partial Summary Judgment, Pursuant to Local Rule 7056-1(b) of the Local Rules of Bankruptcy Procedure; and (iii) the Declaration of Steven S. Flores, Esq., submitted contemporaneously herewith, there is no genuine issue of material fact with respect to the determination of whether AGI was the recipient of an avoidable constructive fraudulent transfer under section 548 of the Bankruptcy Code, and the Trustee is entitled to judgment as a matter of law in his favor.

WHEREFORE, the Trustee respectfully requests entry of an Order granting the Trustee's Motion for Partial Summary Judgment Against Andrew Garrett, Inc.

Dated: New York, New York  
April 30, 2010

ALBERT TOGUT, Chapter 7 Trustee  
By his attorneys,  
TOGUT, SEGAL & SEGAL, LLP  
By:

/s/ Neil Berger

NEIL BERGER  
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